IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 711 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VIMAL SHANTILAL SHAH

Versus

STATE OF GUJARAT

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Appearance:

M/S S & S ASSOCIATES for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/03/2001

C.A.V. JUDGEMENT

#. Heard the learned counsel for the parties.

#. This petition is directed by the petitioner-accused in criminal case No.82/98 pending in the court of 7th

Joint Civil Judge (JD) and J.M.F.C., Surat against the order dated 23-3-2000 of the Court wherein application filed by the APP Ex.7 was granted and Investigating Officer was ordered to make further investigation in the matter and produce the papers and reports as demanded.

#. Learned counsel for the petitioner raised manifold contentions challenging the order of the Judicial Magistrate aforesaid but in view of the order, which I propose to pass in this matter, I do not consider it to be appropriate to give decision on all those contentions. Similarly, it is not necessary to even refer the decisions on which the counsel for the parties placed reliance in support of their respective contentions in view of the order which I propose to pass in this matter.

#. To appreciate the controversy, which has arisen in the present case, the brief facts of the case are to be noticed. On 3-9-98, a criminal complaint was lodged by Inspector of Sales Tax Department, Government of Gujarat at Kapodra Police Station, Surat for the offence under section 75 (1) (c) of the Gujarat Sales Tax Act, 1969. On 15-9-1998, the petitioner was arrested by the police and produced before the learned Magistrate. Learned magistrate ordered for his release on bail. On 22-9-1998, after making investigation, the chargesheet was filed by the police in the Court of Judicial Magistrate, Surat. On 25-8-1999, the plea of the petitioner was recorded and he pleaded not guilty. The trail of the criminal case commenced on 5-11-1999. On that day, what it is stated, oral evidence has been recorded after producing the documentary evidence on record and supplying the same to the accused. On that date, APP, filed an application Ex.7 in which it is stated that the investigation is incomplete without collecting the above mentioned points, i.e points No.1 to 5 as given in the application. Prayer has been made in the interest of justice, as per section 173 (8) of Cr.P.C. to order for further investigation to the concerned Investigating Officer. On 17-12-1999, the petitioner filed an application in which it is stated that on 5-11-1999, the documentary evidence which has been served upon the accused was taken back. The documentary evidence produced was zerox copy and when the demand was objected by the defence side, the same was taken back. It is stated in the application that upon the documentary evidence, prima-facie it appears that there is no case. So therefore documentary evidence taken back on 5-1-1999, which is required to be ordered to be returned back to the defence side. On

17-12-1999, the petitioner filed his detailed objections against the application of the APP dated 5-11-1999, copy of these objections is there on the record of this matter as annexure `E' at page No.30. The application of the learned APP dated 5-11-1999, came to be decided by the learned J.M.F.C., Surat, under the order dated 23-3-2000. The translation of the document has been submitted by the learned counsel for the petitioner. Reply to the special criminal application has not been filed by the respondents.

#. It is not in dispute that against the application of the APP dated 5-11-1999, the petitioner filed his detailed objections. Otherwise also, it cannot be disputed for the reason that the certified copy of this document, has been filed by the petitioner on the record. From this objection, I find that the petitioner has relied upon three authorities, out of which, one appears to be of the Hon'ble Supreme Court. Learned Judicial Magistrate has passed this order as if the petitioner has not opposed the application filed by the APP. Even in the order, the learned J.M.F.C., Surat, has not made reference to the objections which have been filed by the petitioner against the application of the APP dated 5-11-1999. Though from the order, it does not appear whether the petitioner or his counsel were present or not, but even if we proceed with the assumption, presumption and acceptance that nobody was present on behalf of the petitioner, but when written objection has been filed by the petitioner against the application of learned APP dated 5-11-1999, Ex.7, those objections are to be considered by the learned J.M.F.C. Surat and then order could have been passed. The manner and fashion in which this application has been decided by the learned J.M.F.C., Surat is against the basic principles of natural justice and fairplay. It is a judicial order and Judicial Officer has to keep in mind the basic principles which have to be considered while passing of the judicial orders. One of the basic principle is that even if the other side is not present and where the written objection has been filed by it, it has to be recorded, considered and then to given decision in the matter. Here, in this case, learned JMFC, Surat, proceeded in the matter as if it is concerned only with the learned APP and totally oblivious of the fact that the accused has equal right to file objection and oppose the application filed by the APP. This order has been passed in a most slipshod manner and totally against the basic principles of natural justice and fairplay. It is a perverse order, which cannot be allowed to stand.

#. In the result, this special criminal application succeeds and the same is allowed and the order dated 23-3-2000 of the J.M.F.C., Surat below Ex.7 in Criminal Case No.82/98 is quashed and set aside. Learned J.M.F.C., Surat is directed to decide application of the APP, Ex.7 after hearing the learned counsel for the accused-petitioner or where he is not present, after considering the objections filed against that application. Rule is made absolute accordingly. In the facts of this case, no order as to costs.

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